IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFAs No.331 of 2000 & RFA No.157 of 2002.

Judgment reserved on:02.11.2007

Date of Decision:December 07, 2007

For title, please see over-leaf:

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?[1] Yes

For the appellants]
] Please, see over-leaf:
For the respondents]

Kuldip Singh, Judge.

This judgment shall dispose of RFA No.331 of 2000 and RFA No.157 of 2002 both of which have been filed against the award dated 7.7.2000 passed by learned Additional District Judge, Shimla in Land Ref. No.2-S/4 of 1995. RFA No.331 of 2000 has been filed by the owner for enhancement of the compensation and RFA No.157 of 2002 has been filed by the Land Acquisition Collector and State for setting aside the award dated 7.7.2000 as well as order dated 28.11.2000 passed by learned Additional District Judge in CMA No.143-S/6 of 2000 for reviewing the order dated 7.7.2000. The facts of the case are being referred from RFA No.331 of 2000.

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[1] ***Whether reporters of Local Papers are allowed to see the Judgment***? Yes

2. The facts, in brief, are that notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was published in H.P. Rajpatra on 28.7.1990 for acquiring land comprised in Khasra No.12/1 measuring 4 Biswas, Khasra No.13/1 measuring 1 Biswa, Khasra No.15/1 measuring 6 Biswas total 11 Biswas at village Khalini, Tehsil and District Shimla for public purpose for construction of 'Khalini Bihar Link Road'. The land of other owners was also acquired. The Land Acquisition Collector (for short 'Collector') passed the award on 21.6.1993 awarding compensation per bigha as per quality of land, mentioned below:-

i) *Bakhal Abal*	*- Rs.5,77,133-00*
ii) Bagicha Bakhal Abal	*- Rs.5,77,133-00*
iii) Banjar Ghasni and Gair Mumkin	*- Rs.1,20,236-00*

3. The owner of the land was not satisfied with the compensation awarded, therefore, he filed reference petition under Section 18 of the Act. The learned Additional District Judge vide impugned award awarded compensation at the rate of Rs.1200 per square meter irrespective of the classification or quality of land. He has also awarded other statutory payments and interests, mentioned in Para-27 of the impugned award. The learned Additional District Judge awarded compensation at the rate of Rs.600 per square meter for 3 Biswas of land for severance.

4. I have heard Mr.Vinay Kuthiala, learned counsel for the owner of the land, Mr.M.S.Chandel, learned Advocate General, for the State in both the appeals and gone through the record. Mr.Kuthiala has

submitted that the acquired land is situated in Khalini which is developed area of Shimla Town itself. The learned Additional District Judge has awarded compensation of the acquired land on relying lease transaction of land of Shimla Development Authority which is far away from the acquired land and where only lease hold rights were transferred to the allottee at the rate of Rs.1252 per square meter. In the present case, ownership rights have been acquired which are higher rights in comparison to lease hold rights, therefore, even on the basis of transaction relied by learned Additional District Judge the owner is entitled to higher rates. The learned Advocate General has submitted that the learned Additional District Judge has erred in enhancing the compensation in the impugned award over and above what was allowed by the Collector. He has submitted that review order dated 28.11.2000 vide which learned Additional District Judge has rejected the contention of the State is also wrong and is liable to be set aside.

5. The notification under Section 4 of the Act was published in Rajpatra on 28.7.1990, therefore, the market value of the acquired land is to be seen on that date. PW-1 Khem Chand has proved sale deed Ext.P-1 in Fingask area vide which he purchased 184.1 square yards land for a consideration of Rs.1,95,000. PW-3 Tejwant Singh has proved sale deed Ext.P-2 vide which he purchased 181.3 square yards land in Boileauganj area for Rs.2 lacs. PW-5 Dr.S.K.Sharma has proved sale deed Ext.PW-5/A vide which he has purchased 151.6 square meters of land in Boileauganj area for a consideration of Rs.2 lacs. PW-6 Vipan has proved sale deed Ext.PW-6/AI vide which in the year 1989 his wife Smt.Kamla Devi purchased 241.1 square yards land from Baljit Singh for

a consideration of Rs.1,50,000. PW-6 (he should be PW-7) Om Parkash Chauhan, Senior Assistant, Office of Chief Administrator, Shimla Development Authority (for short 'SDA') has stated that in 4th Scheme from 1989 to 1991 SDA has sold to public plots on 99 years lease. In this scheme allottee can construct only two storey house. The applications for this allotment were called in the year 1986, a copy of which is Ext.PW-6/A but allotment was made in the year 1990 vide Ext.PW-6/B. These plots were allotted at Rs.910 per square meter but later on in view of the increase made by the Court the rate was fixed at Rs.1252 per square meter. The plots of SDA are quite far from Shimla whereas the acquired land is near to Bazar. PW-7 Sanjay Kuthiala, General Power Attorney holder of Gian Chand owner has stated that in the year 1990 in their area the market price of the land was Rs.3000 per square yard. The acquired land could be used for construction of hotel and houses. In Khalini area shops, flats and hotels are being constructed. The facilities of road, electricity, water, sewerage etc. are available to his land. In the year 1990, in proper Khalini no genuine sale transaction took place. DW-2 Mangat Ram, Kanungo has proved one year average sale price Ext.RW-2/A of Mauza Khalini from 29.7.1989 to 28.9.1990. PW-4 Hardyal Jistu, Patwari, Patwar Circle, Badhai, has stated that Khasra Nos.12/1, 13/1 and 15/1 total measuring 11 biswas were acquired. The road on the spot passes through the land of the owner of the land and his land has been divided into three pieces, a plot of three biswas has been severed as a result of this acquisition. Khalini is a developing area which has all the basic amenities such as schools, english medium school, dispensary, business centre, Government

offices, Government accommodation. The price of the land in Khalini area is rising. The State has just produced average sale price of the plots in Khalini area vide Ext.RW-2/A.

6. The average sale price of the plots produced by the State cannot be relied for assessing the market value of the acquired land inasmuch as the State has not produced the sale deeds on the basis of which the average sale price Ext.RW-2/A was worked out. Similarly, the State has also not produced any evidence comparing the acquired land with the lands of sales on the basis of which average sale price Ext.RW-2/A was worked out. The sale deeds Ext.P-1, Ext.P-2, Ext.PW-5/A, Ext.PW-6/A are of far off places from the acquired land and, therefore, these sale deeds also have not been rightly relied by learned Additional District Judge for assessing the market value of the acquired land.

7. Now only evidence left is of sale of lease hold rights by SDA to allottees of plots in SDA area. One Parkash Chand applied to SDA for allotment of plot on 31.3.1986 vide Ext.PW-6/A. The plot was allotted to him on 16.10.1990 vide Ext.PW-6/B under 4th Partially Self-Financing Scheme and the allotment of specific plot was made to him on 8.4.1991 vide Ext.PW-6/C. On 6.8.1993 vide Ext.PW-6/D he was informed that earlier cost was worked out at Rs.910 per square meter but now it has been increased to Rs.342 per square meter over and above already worked out. In other words, as per Ext.PW-6/D, the cost of the plot allotted to Parkash Chand by SDA comes to Rs.1252 per square meter. PW-6 Om Parkash Chauhan has stated that in 4th Scheme plots were sold to public from 1989 to 1991 on 99 years lease, therefore, it can be

safely inferred that in the year 1989 price of lease hold land in SDA area was at Rs.1252 per square meter.

8. Mr.Kuthiala has submitted that lease hold rights are inferior to ownership right and, therefore, owner is entitled to at least 25% more over and above the market value of land of SDA where only lease hold rights were transferred by Shimla Development Authority under the 4th Self Financing Scheme. In support of this contention, he has submitted that while apportioning compensation of land acquired under lease ratio of 25% and 75% between lessor and lessee has been accepted by Courts. The owner is entitled 25% more compensation for acquiring his ownership title in the land in comparison to lessee. He has further submitted that on the basis of SDA rates of the acquired land in the year 1989 the owner is further entitled to 10% increase as the notification under Section 4 of the Act for acquiring the land in question was issued on 28.7.1990 and 10% increase per year in the market price is normal accepted principle. For this purpose, he has relied ***Lila Ghosh*** *(Smt.) (Dead) through LR* ***Tapas Chandra Roy*** *Versus* ***State of W.B., (2004) 9 SCC 337.*** Thus, according to him, the owner is entitled to at least 35% increase over and above market price of lease hold rights at which SDA sold its plots in the year 1989 in SDA area. The owner is accordingly entitled to increase in compensation for 3 biswas of land due to severance.

9. The contention of Mr.Kuthiala that simply on the basis of market value of lease hold rights in the year 1989 of SDA plots the owner is entitled to 25% increase for acquiring his ownership right in the acquired land, has no force. No doubt, apportionment of 25% and 75%

between lessor and lessee regarding compensation of lease land has been approved in some judgments but that does not mean that the market value of the acquired land is to be increased by 25% in comparison to market value of land under lease and acquired under the Act. In acquisition of lease land first of all market value is determined and then the compensation is apportioned between lessor and lessee. It is not like this that after determination of market value of lease land owner is paid 25% more compensation. Therefore, this contention of learned counsel for the owner is rejected.

10. However, it has come on record that acquired land is in Khalini, a developed area of Shimla Town itself and nearer to main city in comparison to SDA area, where plots were sold by SDA on lease hold basis. PW-4 Hardyal Jistu, Patwari, has stated that Khalini is a developing area which has all the basic amenities such as schools, english medium school, dispensary, business centre, Government offices, Government accommodation etc. PW-7 Sanjay Kuthiala, General Power Attorney holder of Gian Chand owner, has stated that the acquired land could be used for construction of hotel and houses. In Khalini area shops, flats and hotels are being constructed. The facilities of road, electricity, water, sewerage etc. are available to his land. Therefore, the acquired land is situated in already developed area and is more nearer to main Shimla city in comparison to SDA area. In the present case, the full ownership rights were acquired by the State whereas SDA in 4th Self-Financing Scheme has allotted the plots on lease hold basis with several restrictions. In SDA area on lease hold plots construction can be raised only up to two storeys. There was no

such restriction on the acquired land. The acquired land has better market value in comparison to plots allotted by SDA in 4th Self-Financing Scheme on lease hold basis. In ***Krishna Yachendra Bahadurvaru*** *Versus* ***The Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and others,*** *AIR 1979 SC 869,* the Hon'ble Supreme Court has held that the estimation of the market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess. In view of *Lila Ghosh's case (supra),* 10% increase in market value in the year 1990 of the acquired land taking the base year 1989 is also permissible. Therefore, keeping in view all the facts and circumstances of the case and the evidence on record, in my opinion, the market value of the acquired land is 25% more over and above Rs.1252 per square meter of SDA plots sold by SDA in 4th Self-Financing Scheme. Thus, market value of the acquired land is assessed at Rs.1252+Rs.313=Rs.1565 per square meter. The owner is thus entitled to compensation of acquired land at Rs.1565 per square meter. He is also entitled to compensation for 3 biswas of land severed due to acquisition at half of the market value of the land which comes to Rs.782 per square meter. In addition to market value of the land as assessed above the owner is also entitled to amount at the rate of 12% per annum on the market value of the acquired land from 28.7.1990 date of publication of the notification under Section 4 of the Act to 21.6.1993 date of award of the Collector under Section 23 (1-A) of the Act, the owner is also entitled to 30% compulsory acquisition charges on market value of the acquired land. The owner is also entitled to 9% interest per annum

on excess compensation from 28.7.1990 to 28.7.1991 and thereafter at the rate of 15% per annum till payment.

11. In view of the above discussion, the impugned award is modified, RFA No.331 of 2000 is allowed and an award at the rate of Rs.1565 per square meter of the acquired land comprised in Khasra No. 12/1 measuring 4 Biswas, Khasra No.13/1 measuring 1 Biswa, Khasra No.15/1 measuring 6 Biswas total 11 Biswas at village Khalini, Tehsil and District Shimla and at the rate of Rs.872 per square meter of 3 biswas of severed land due to acquisition is passed in favour of owner / appellant and against respondents. In addition, the owner / appellant is further entitled to amount at the rate of 12% per annum on the market value of the acquired land from 28.7.1990 date of publication of the notification under Section 4 of the Act to 21.6.1993 date of award of the Collector under Section 23 (1-A) of the Act, the owner is also entitled to 30% compulsory acquisition charges on market value of the acquired land. The owner is also entitled to 9% interest per annum on excess compensation from 28.7.1990 to 28.7.1991 and thereafter at the rate of 15% per annum till payment, RFA No.157 of 2002 is dismissed. No costs.

December 07, 2007 ***(Kuldip Singh), J.***

(soni)

1. RFA No.331 of 2000:

Gian Chand Kuthiala **…Appellant.**

Versus

The L.A.C. & Anr. **..Respondents.**

For the appellant: **Mr.Vinay Kuthiala, Advocate.**

For the respondents: **Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G.**

2. RFA No.157 of 2002:

L.A.C. & Anr. **…Appellants.**

Versus

Gian Chand Kuthiala **..Respondent.**

For the appellants: **Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G.**

For the respondent: **Mr.Vinay Kuthiala, Advocate.**

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.157 of 2002.

Reserved on:02.11.2007.

Decided on:December 07, 2007

L.A.C. & Another. ***….Appellants***

Versus

Gian Chand Kuthiala ***…Respondent***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[2]

For the Appellants: **Mr.M.S.Chandel, Advocate General, with Mr.M.L.Chauhan, Addl. A.G.**

For Respondent: **Mr.Vinay Kuthiala, Advocate.**

Kuldip Singh, Judge

For judgment, see Judgment of even date, rendered in ***RFA No.331 of 2000*** *titled* ***Gian Chand Kuthiala*** *Versus* ***The Land Acquisition Collector & Another.***

December 07, 2007 ***(Kuldip Singh), J.***

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[2] ***Whether the reporters of the local papers may be allowed to see the Judgment?***